



**NAILAH K. BYRD**  
**CUYAHOGA COUNTY CLERK OF COURTS**  
1200 Ontario Street  
Cleveland, Ohio 44113

**Court of Common Pleas**

**ANSWER OF...**  
**July 15, 2019 10:04**

By: L STEWART HASTINGS 0025852

Confirmation Nbr. 1761571

STATE OF OHIO EX REL. LAWRENCE BRESLER ET  
AL

CV 19 916774

vs.

PATRICIA BRITT

**Judge:** DICK AMBROSE

**Pages Filed:** 10

IN THE COURT OF COMMON PLEAS  
CUYAHOGA COUNTY, OHIO

THE STATE OF OHIO ex rel. LAWRENCE	)	CASE NO. CV 19 916774
BRESLER, et. al.	)	
	)	
Relators,	)	JUDGE DICK AMBROSE
	)	
vs.	)	
	)	<b><u>ANSWER TO RELATORS' COMPLAINT</u></b>
PATRICIA BRITT, City Clerk, Clerk of	)	
Counsel (Sic)	)	
	)	
Respondent	)	
	)	

Respondent Patricia Britt, Clerk of Council (Ms. Britt), sued in her official capacity only, responds to Relators' Complaint as follows:

**ANSWER**

1. In response to Paragraph one of the complaint Ms. Britt states that she has determined the sufficiency of a petition for initiative submitted by these Relators, and determined that the petition is insufficient.
2. Ms. Britt admits the allegations in paragraph two of the complaint.
3. Ms. Britt denies the allegations in paragraph three of the complaint.
4. Ms. Britt lacks knowledge sufficient to form a belief as to the truth of the allegations in paragraph four of the complaint.

5. Ms. Britt denies the allegations in paragraph five of the complaint.
6. Ms. Britt admits the allegations in paragraph six of the complaint.
7. Ms. Britt admits the allegations in paragraph seven of the complaint.
8. Ms. Britt admits the allegations in paragraph eight of the complaint, though she denies the referenced petition was sufficient under the Charter and Ohio law.
9. In response to paragraph nine of the complaint Ms. Britt admits that Relators quote various sections of The City of Cleveland's charter, but she denies any implication that the three cited sections in and of themselves control the filing of initiative petitions.
10. Ms. Britt admits that Relators filed certain papers on or about April 2, 2019, but denies that those papers constituted valid petition papers as described in paragraph ten of the complaint.
11. In response to paragraph 11 of the complaint Ms. Britt denies that a final determination had been made concerning the validity of the petition papers. Prior to the April 12, 2019 deadline Ms. Britt determined that the papers were not in the proper form to be considered valid petition papers.
12. In response to paragraph 12 of the complaint Ms. Britt admits that she notified Relators that she would determine the sufficiency of the petition within the time period prescribed by law.
13. In response to paragraph 13 of the complaint Ms. Britt admits that one of the things she must determine is that whether the petition is signed by the requisite number of electors. She denies that it is the only thing she must determine. She must also determine whether the petitions use a correct form.

14. In response to paragraph 14 of the complaint Ms. Britt admits that she notified Relators that the petitions do not contain the required statutory language, and that they were invalid as a result. She denies all other allegations in paragraph 14.

15. Ms. Britt denies the allegations contained in paragraph 15 of the Complaint as being an insufficient description of her duties as a Clerk. Without waiving her denial Ms. Britt admits that her authority to review petitions is limited to matters of form and determining the sufficiency of signatures. However, the case cited by Relators does not apply to this matter. In *State ex. rel. Langhery (sic) v. Britt*, 151 Ohio St.3d 227 (2017) as cited by Relators the issue was whether the clerk could do a substantive analysis to determine whether a proposed ordinance was constitutional. The appropriate and governing decision under the circumstances presented by this matter is *State ex. rel. Finkbeiner v. Lucas City Board of Elections*, 122 Ohio St.3d 462 (2010). In *Finkbeiner* as well as this matter the issue is whether the clerk can accept a petition defective in form on its face. The Supreme Court held that the statutory language required by O.R.C. §3501.38(J) requires strict compliance and invalidates petitions that do not have the exact language. This was true even when that requirement is not explicitly in the city charter. *Id.* at ¶35. In the present case, Relators' petitions lack the exact same language as described in *Finkbeiner*. Attached to this answer as Exhibit A is a sample of the form used by these Relators. On its face, it does not have the required language of O.R.C. 3501.38(J), and, therefore, does not qualify as a petition for referendum.

16. In response to paragraph 16 of the complaint, Ms. Britt denies that Relators have accurately described the response by the Cuyahoga County Board of Elections. The Board of Elections reported that the signatures were before the board, and were sufficient.

However, the Board of Elections further pointed out to Ms. Britt that the petitions did not have the required statutory language. The determination of the sufficiency of the form of the petitions was for Ms. Britt to determine.

17. Ms. Britt denies the allegations in paragraph 17 of the complaint.

18. Ms. Britt admits the letter referenced in paragraph 18 of the complaint and attached as exhibit 5 to the Complaint was sent to the City of Cleveland's Law Director.

19. In response to paragraph 19 of the complaint, Ms. Britt admits only that the Law Director declined Mr. Dann's request of May 8, 2019 and denies all remaining allegations to include the allegation that the request was lawful based on the Relators' failure to comply with the required and established legal form for petitions.

20. In response to paragraph 20 of the complaint, Ms. Britt denies that a Writ of Mandamus is appropriate in this case.

21. Ms. Britt responds to paragraph 21 of the complaint in the same manner as above.

22. In response to paragraph 22 Ms. Britt denies that a writ of Mandamus is appropriate in this case.

23. Ms. Britt denies that paragraph 23 of the complaint accurately states the applicable law, and denies that the elements of a Writ of Mandamus are met in this matter.

24. In response to paragraph 24 of the complaint Ms. Britt denies that Relators have properly stated her legal duty for purposes of this Mandamus action. Ms. Britt admits that while she must determine the sufficiency of signatures for a petition, paragraph 24 does not fully describe all her duties. Ms. Britt is also responsible to determine if the

form of the petitions is sufficient. In this case, the petition forms lacked required statutory language.

25. The allegations in paragraph 25 of the complaint are denied.

26. The allegations in paragraph 26 of the complaint are denied.

#### AFFIRMATIVE AND ADDITIONAL DEFENSE

1. Harmonization of the provisions of the City's Charter with the applicable Ohio statutes establishes as a matter of law that the Relators have failed to state a claim upon which the requested mandamus relief may be granted.

WHEREFORE, having fully answered the Complaint, Respondent respectfully requests that the Court deny the order of mandamus requested by Relators and that the Complaint be dismissed with prejudice at the earliest moment.

Respectfully submitted,

BARBARA LANGHENRY (#0038838)  
DIRECTOR OF LAW

/s/ Stewart Hastings  
STEWART HASTINGS (#0025852)  
ASSISTANT DIRECTOR OF LAW  
ELENA BOOP (#0072907)  
CHIEF ASSISTANT DIRECTOR OF LAW  
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EBOOP@city.cleveland.oh.us  
ATTORNEYS FOR RESPONDENT  
PATRICIA BRITT

**CERTIFICATE OF SERVICE**

I certify that a true and accurate copy of Defendants' foregoing Answer was served by electronic means through the court's E-filing system this 15th day of July 2019.

/s/ Stewart Hastings  
Stewart Hastings  
Assistant Director of Law

# EXHIBIT A



202

## ORDINANCE BY INITIATIVE PETITION

Pursuant to the Charter of the City of Cleveland, Chapter 7  
To be signed by five thousand (5,000) qualified electors of the City of Cleveland.

NOTICE - Whoever knowingly signs this petition more than once, signs a name other than his own, or signs when not a legal voter, is liable to prosecution.

We, the undersigned, electors of the City of Cleveland, Ohio hereby submit to the Clerk of Council of the City of Cleveland, Ohio a proposed ordinance by initiative petition pursuant to the Cleveland City Charter Sections 49-58.

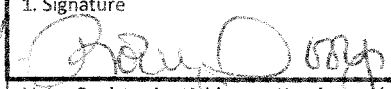
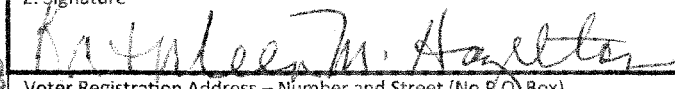




## COMMITTEE OF THE PETITIONERS

We hereby designate the following electors of the City as a committee pursuant to the Cleveland City Charter, Section 49, and to be regarded as filing this ordinance and constituting a Committee of the Petitioners:

Lawrence Bresler	2671 Haddam Rd., Cleveland, Ohio 44120
Rosemarie E. Driscoll	4605 Bridge Ave., Cleveland, Ohio 44102
Jesse H. Faley	1444 West 81 <sup>st</sup> St., Cleveland, Ohio 44102
Yvonka M. Hall	18115 Harvard Ave., Cleveland, Ohio 44128
Jeffrey D. Johnson	13508 Larchmere Blvd., Cleveland, Ohio 44120
Diana King	12526 Griffing Ave., Cleveland, Ohio 44120
Chris Knestrick	3320 Monroe Ave., Cleveland, Ohio 44113
Jeffrey B. Mixon	1188 East 86 <sup>th</sup> St., Cleveland, Ohio 44108
Christopher Stocking	6404 Bridge Ave., Cleveland, Ohio 44102
Darrick Wade	3750 Fleming Ave. #303, Cleveland, Ohio 44115

**MUST USE MOST RECENT ADDRESS ON FILE WITH BOARD OF ELECTIONS**

*(Sign with ink. Your name, residence, and date of signing must be given.)*

1. Signature 		Print Full Name Robyn Ivory	
Voter Registration Address – Number and Street (No P.O. Box) 1055 E. 78th St			
City, Village, or Township Cleveland	Zip Code 44103	County Cuyahoga	Date 3-8-19
2. Signature 		Print Full Name Kathleen M. Hazeltan	
Voter Registration Address – Number and Street (No P.O. Box) 19601 Van Aken Blvd. #50			
City, Village, or Township Cleveland	Zip Code 44122	County Cuyahoga	Date 3/8/19
3. Signature 		Print Full Name Kristen Frase	
Voter Registration Address – Number and Street (No P.O. Box) 200 Chatham Way apt 523			
City, Village, or Township Cleveland	Zip Code 44124	County Cuyahoga	Date 3/8/19
4. Signature 		Print Full Name Martha Ligas	
Voter Registration Address – Number and Street (No P.O. Box) 2632 Hampshire Rd.			
City, Village, or Township Cleveland	Zip Code 44106	County Cuyahoga	Date 3/8/19
5. Signature 		Print Full Name Joe Jones	
Voter Registration Address – Number and Street (No P.O. Box) 4691 E. 177th			
City, Village, or Township Cleveland	Zip Code 44126	County Cuyahoga	Date 3/8/19
6. Signature 		Print Full Name Angela Y. Davis	
Voter Registration Address – Number and Street (No P.O. Box) 1765 Hillview Road UP			
City, Village, or Township Cleveland	Zip Code 44112	County Cuyahoga	Date 3/8/19

### CIRCULATOR STATEMENT

I, Eric Dedmer (Printed Name of Circulator), declare under penalty of election falsification that I reside at the address appearing below my signature; that I am the circulator of the foregoing petition containing 26 (Number) signatures; that I witnessed the affixing of every signature; that all signers were to the best of my knowledge and belief qualified to sign; that these petition papers contained a copy of the proposed ordinance in full; and that every signature is to the best of my knowledge and belief the signature of the person whose signature it purports to be or of an attorney in fact acting pursuant to Section 3501.382 of the Revised Code.

  
\_\_\_\_\_  
(Signature of Circulator)

1431 Winchester Ave  
\_\_\_\_\_  
(Permanent residence address)

Lakewood, OH 44107  
\_\_\_\_\_  
(City or Village, State, and Zip Code)